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EXTRAORDINARY

PART II—Section 3

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No. 136] NEW DELHI, SATURDAY, MAY 30, 1953

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 20th May 1953

S.R.O. 1023.—WHEREAS the election of Shri Bhola, as a member of the Legislative Assembly of the State of Uttar Pradesh, from the Ghazipur South West constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act 1951 (XLIII of 1951), by Shri Beni Madho Rai, son of Shri Sheopujan Rai, Garua Maqsdpur, Pargana Zamania, P. S. Zamania, District Ghazipur;

AND WHEREAS, the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has in pursuance of the provisions contained in section 103 of the said Act sent a copy of its Order to the Commission;

Now, THEREFORE, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL AT ALLAHABAD

PRESENT:

Sri V. G. Oak, I.C.S.—Chairman.

Sri N. N. Mukerji—Member.

Sri Babu Ram Avasthi—Member.

ELECTION PETITION No. 275 of 1952

Sri Beni Madho Rai—Petitioner.

versus

Sri Bhola and others—Respondents.

JUDGMENT

This is an election petition challenging the election to U.P. Legislative Assembly held in 1952 from Ghazipur (South-West) Constituency. The petitioner's case is that he and the thirteen respondents were the fourteen duly nominated candidates for the said election. Respondents Nos. 7 to 13 withdrew and the petitioner and respondents Nos. 1 to 6 contested the election. As a result of the poll, Sri Bhola, respondent No. 1, was declared elected. But the election is void for various reasons. Sri Bhola, respondent No. 1 was a panch and also sarpanch of Panchayat Adalat of Nagsar Centre in the aforesaid Constituency. As such he could not seek nomination or stand for election. Respondent No. 1 brought pressure upon respondents Nos. 7 and 10, and compelled them to withdraw from the contest. Similarly respondent No. 8 was made to withdraw in favour of respondent No. 3; and respondent No. 9 was compelled to withdraw in favour of respondent No. 2. Throughout the Constituency there was canvassing on commu-

nal and caste lines. Sri Bhola, respondent No. 1 is an Ahir. In a meeting of Ahirs respondent No. 1 brought pressure upon Ahirs for casting their votes in his favour. Respondent No. 1 committed acts of bribery. Respondents Nos. 1 and 2 furnished false returns of their election expenses. Respondent No. 2 was an Honorary Magistrate. He freely canvassed occupying the position of Honorary Magistrate. A number of panches of Panchayati Adalats canvassed in favour of respondent No. 1 in contravention of Panchayat Raj Rules. The petitioner, therefore, prayed for a declaration that, the election of respondent No. 1 is void, and the petitioner has been duly elected. In the alternative it was prayed that the whole election be declared void.

Respondents Nos. 4 and 5 filed written statements in support of the petition. The election petition was contested by Sri Bhola, respondent No. 1. He pleaded that he had resigned from his post of panch and sarpanch before the date of nomination. Further, the post of a panch or sarpanch of a Panchayati Adalat does not constitute a bar for seeking nomination or election. The charges of undue influence and coercion were denied. It was denied that he induced Ahirs to vote for him on caste lines. It was denied that he or other respondents canvassed on communal lines. This charge of bribery was denied. It was denied that the returns of expenses of respondents Nos. 1 and 2 are false. It was denied that threats and pressure were employed to make candidates withdraw from the election. It was pleaded that respondent No. 1 took reasonable precautions to prevent corrupt or illegal practices. On these pleadings the following issues were framed:

ISSUES

1. Was respondent No. 1 a panch and a sarpanch on the date of nomination? Was he disqualified for standing for this election.

2. Whether respondent No. 1 is guilty of exercising undue influence and coercion as detailed in paragraph (4) of the petition read with paragraphs 1(a), 1(b) and 3(b) of the List?

3. Did respondent No. 1 directly or indirectly violate rule 61A of the Panchayat Raj Rules as detailed in para (5) of the petition?

4. Is respondent No. 1 guilty of bribery as detailed in paragraph (6) of the petition, read with paragraphs 2(a), 2(b) and 2(c) of the List?

5. Whether respondents Nos. 1, 2, 3, 4, 5 and 6, or any of them canvassed on communal lines as detailed in paragraph (7) of the petition read with paragraphs 7, 8 and 9 of the List?

6. Was respondent No. 2 (as an Honorary Magistrate) disqualified for standing for election? Did he canvass as Honorary Magistrate? Did such canvassing materially affect the result of the election? Was such canvassing improper or illegal?

7(A) Was the return of expenses of respondent No. 1 false as detailed in paragraphs 2(a), and 2(b) of the List, and paragraph (15) of the petition?

(B) Was the return of expenses of respondent No. 2 false as detailed in paragraphs 6(a) and 6(b) of the List?

8. Did respondents Nos. 1, 2 and 3 use threats and pressure to make respondents Nos. 7, 8, 9 and 10 withdraw from the election as detailed in paragraphs 10 and 16 of the petition, and paragraphs 1(a), 5(c) and 7(a) of the List?

9. Did respondent No. 1 take reasonable precautions as detailed in para 23 of his written statement? If so, its effect?

10. Did the irregularities detailed above materially affect the result of the election?

11. To what remedy, if any, is the petitioner entitled?

FINDING

Issue No. 1.—Respondent No. 1 conceded that he was at one time a panch and sarpanch of Panchayati Adalat of Nagsar Centre. But his contention is that he resigned from the posts of panch and sarpanch before his nomination for the election to the Legislative Assembly. There are on the file two documents—Exs. 1 and 2—which are said to be Sri Bhola Singh's resignations. Ex. 2 is dated 29th December, 1950, and Ex. 1 is dated 23rd November, 1951. Ex. 2 dated 29th December 1950 was addressed to the Panchayat Inspector. It was submitted by the Inspector on 5th January 1951 to the District Panchayat Officer. No order on Ex. 2 appears to have been passed by the District Panchayat Officer. Sri Shiva Adhar Misra (P.W. 3) is Assistant District Panchayat Officer at Ghazipur. He

gave a report (Ex. 3) on 4th September 1952 to the effect that, there was no paper in his office about resignation of Bhola Singh from the post of panch. Shiva Deni Rai (P.W. 1) is the Secretary of the Panchayati Adalat at Nagsar. He brought various registers, and showed that Bhola Singh continued to work in the Panchayati Adalat till September, 1951. It appears that the resignation, Ex. 2, dated 29th December 1950, was not acted upon.

The second resignation is Ex. 1, dated 23rd November 1951. November 24, 1951 was the last date for filing nominations. Thus Ex. 1 purports to have been presented one day before the last date for filing nominations. Sri Sehat Bahadur appearing for the petitioner criticised the resignation Ex. 1 on five grounds—(a) the order on Ex. 1 does not bear the seal of the office; (b) the order has been anti-dated (c) the resignation was not presented to the prescribed authority; (d) Bhola Singh's signature on Ex. 1 has not been proved; and (e) the resignation was from the post of sarpanch and not from the post of panch.

At the foot of Ex. 1 the District Panchayat Officer to whom the application was addressed passed the following order on 23rd November 1951: "Resignation accepted. Applicant to be informed accordingly." There is a note below the officer's order to the effect that, the order was given to the despatcher on 26th November 1951. It was, therefore, argued that this document was prepared on 26th November 1951, and not on 23rd November 1951. It is true that there is no office seal on the document, and the order was not given to the despatcher till the 26th. But these considerations are not sufficient for holding that the District Panchayat Officer anti-dated his order. Sri Bhola did not enter the witness-box to prove his signature on Ex. 1. This document was filed at the petitioner's instance. Sri S. C. Khare appearing for the respondent, therefore, contended that, Bhola Singh's signature should be taken as proved. The District Panchayat Officer's signature was proved by P.W. 3. But the petitioner was not bound to admit Bhola Singh's signature on the application. There is no other evidence to prove the signature. Sri Bhola's signature on Ex. 1 has not been strictly proved.

Ex. 1 was to the effect that, for certain reasons the applicant wished to be relieved from the duties of sarpanch. The application was addressed to the Panchayat Officer, district Ghazipur. Two questions now arise—whether Ex. 1 was a resignation from the post of panch also, and whether the application was addressed to the proper authority.

Section 43. U.P. Panchayat Raj Act, deals with the constitution of Panchayati Adalat. Section 44 of the Act provides for election of sarpanch from among the panches. Section 47 of the Act states:—"A panch may submit the resignation of his office to the prescribed authority." There is no corresponding section in the Act providing for a resignation by a sarpanch. But Rule 62 of U.P. Panchayat Raj Rules contemplates a resignation of a sarpanch of a Panchayati Adalat. We may, therefore, take it that, it is open to a sarpanch to resign. The question, however, remains whether resignation from the post of sarpanch necessarily implies resignation from the post of panch. There is nothing in the Act or Rules to suggest that, a resignation from the post of sarpanch puts an end to the person's status as a panch. Appendix A to U.P. Panchayat Raj Rules contains a schedule of prescribed authorities. For purposes of section 47 of the Act an Assistant District Panchayat Officer is the prescribed authority. So a resignation by a panch under section 47 has to be submitted to an Assistant District Panchayat Officer. But Ex. 1 was addressed to the Panchayat Officer. So Ex. 1 cannot be considered as a valid resignation under section 47, Panchayat Raj Act. On any view of the matter the resignation Ex. 1 could not have the effect of putting an end to Sri Bhola's status as a panch of Panchayati Adalat, Nagsar Centre.

Shiva Deni Rai (P.W. 1) stated that there was no signature of Bhola Singh dated 23rd November 1951, or any subsequent date on any proceedings of the Panchayati Adalat. No judgment of 1951 bears Bhola Singh's signature. Ram Nath (P.W. 9) stated that Sri Bhola did not do any work as panch or sarpanch after November 1951, and gave charge to Ramnath as panch and sarpanch. Ramnath said that Shri Bhola's post as panch is still lying vacant. It is true that Shri Bhola did not take part in the work of the Panchayati Adalat after November 1951. Nevertheless, in law, he continues to be a panch. We hold that Sri Bhola, respondent No. 1, was a panch (and perhaps also a Sarpanch) on the date of nomination.

The question now arises whether Sri Bhola was disqualified for standing for election due to the fact that, he was a panch of the Panchayati Adalat. The

petitioner relies upon Rule 61A of U.P. Panchayat Raj Rules. Rule 61A(1) runs thus:—

"If any Sarpanch or Panch of a Panchayati Adalat or his son or brother or any other close relation desires to stand for election to a local body other than a Gaon Panchayat or Panchayati Adalat or to the Provincial Legislature from the area in which he exercises Jurisdiction, the Sarpanch or Panch concerned shall inform the prescribed authority concerned of such intention. The prescribed authority shall immediately take steps to ensure that the Sarpanch or Panch does not take part in any bench for the disposal of cases or suits or proceedings of the area to which the election relates. No Sarpanch or Panch shall take part in any election to a local body other than a Gaon Panchayat or Panchayati Adalat or to the State Legislature in any area within his jurisdiction otherwise than by casting his own vote as an elector."

Rule 61-A(1) consists of two parts. The first part contains a direction that a Panch should inform the prescribed authority about his intention to stand for election. The second part lays down that, no panch shall take part in any election to the State Legislature in any area within his jurisdiction. On the face of it the rule creates a disqualification for membership to the State Legislature. It has now to be considered whether the rule can in fact create such a disqualification.

The learned counsel for the parties referred to different provisions of the Constitution about qualifications and disqualifications for membership of the Legislature. Article 173 of the Constitution prescribes the qualifications for membership of the State Legislature. Article 191 contains disqualifications for membership. Article 191(1) runs thus:

"A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State—

- (a) if he holds any office of profit under the Government of India or the Government of any State, specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder;
- (b) if he is of unsound mind and stands so declared by a competent Court;
- (c) if he is an undischarged insolvent;
- (d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State;
- (e) if he is so disqualified by or under any law made by Parliament."

If will be noticed that clauses (a) to (d) of Article 191(1) contain four specific disqualifications Clause (e) is "if he is so disqualified by or under any law made by Parliament". It is significant that clause (e) refers to laws made by Parliament, but contains no reference to laws made by the State Legislature, although the disqualification relates to membership of a State Legislature. Article 328 deals with the power of Legislature of a State to make provision with respect to elections to such Legislature. Article 328 states: "Subject to the provisions of this Constitution and in so far as provision in that behalf is not made by Parliament, the Legislature of a State may from time to time by law make provision with respect to all matters relating to or in connection with the elections to the House or either House of the Legislature of the State" It was urged for the petitioner that Article 328 confers powers on the State Legislature to create disqualifications for membership of the Legislature. But this power is subject to the provisions of the Constitution and in so far as provision in that behalf has not been made by Parliament. We have seen that Article 173 deals with qualifications for membership of the State Legislature, and Article 191 deals with disqualifications for membership. It appears that Articles 173 and 191 of the Constitution exhaustively deal with the questions of qualifications and disqualifications, for membership. It is not, therefore, possible to create new disqualifications not contemplated by Articles 173 and 191. The only manner of creating new disqualifications is as laid down in clause (e) of Article 191(1). The disqualification must be under a law made by Parliament. The language of clause (e) shows that it is Parliament alone which can make a law on the question of disqualification. It is not open to a State Legislature to create a new disqualification, much less, it is open to the State Government to create a new disqualification not contemplated by Articles 173 and 191. Since the subject of disqualifications for membership has been exhaustively dealt with in Article 191, new disqualifications cannot be created by a State Legislature under Article 328 of the Constitution.

Rule 61-A of U.P. Panchayat Raj Rules has been framed by the U.P. Government under powers conferred upon it by section 110 U.P. Panchayat Raj Act. We have seen that neither the State Legislature nor the State Government is competent to create a new disqualification for membership of the State Legislature. So Rule 61-A cannot have the effect of creating such a disqualification. However, Rule 61-A need not be wholly ineffective. Rule 61 states that the prescribed authority may remove a panch or sarpanch for contravention of Rule 61-A. A panch, who violates Rule 61-A, becomes liable for removal under Rule 61. But the person's position as a panch does not involve his disqualification for membership. We, therefore, hold that, although Sri Bhola Singh was a panch of a Panchayati Adalat, he was not disqualified, for standing for election to the State Assembly.

Issue No. 2.—The petitioner has alleged two specific instances of undue influence and coercion on the part of respondent No. 1. The first alleged incident took place in the Collectorate compound at Ghazipur. It is said that on 30th November 1951 a number of persons, including Sri Bhola Singh respondent and Aditya Narayan Singh and Ram Krishna Yadava candidates, assembled in the Collectorate compound near a tea shop. Shri Bhola asked Aditya Prasad and Ram Krishna Yadava to withdraw their candidature. The two candidates were at first reluctant to withdraw. But Sri Bhola and his companions warned the two candidates, that they would be ex-communicated unless they withdrew their candidature. Ultimately Aditya Prasad and Ram Krishna agreed to withdraw. The petitioner produced two witnesses to prove this incident. They are Sri Vishwanath Varma (P.W. 10) and Sri Ramdeo Rai (P.W. 16). Sri Vishwanath Varma is a Mukhtar at Ghazipur. The petitioner was a congress candidate. Formerly Sri Vishwanath Varma was a member of the City Congress Committee. His sympathy was with every congress candidate. He helped in congress work in so far as it concerned court work. Sri Ramdeo Rai is a pleader. He does not pay income-tax. He said that he was canvassing for Badri Narayan candidate. The witness is, therefore, interested in unseating the returned candidate. The petitioner and the witness are both Bhumihars. The pleader admitted that he supported Badri Narayan candidate, partly because he is also a Bhumihar. Thus it appears that the witness is not beyond communal consideration.

Sri Krishna alias Hridayash (P.W. 8) is the editor of a journal at Ghazipur. He is proprietor of a press. He stated that on 27th November 1951 he received letter Ex. 4 from Aditya Narayan Singh showing that, he was anxious to contest the election. But on 3rd December 1951 Aditya Narayan Singh wrote another letter (Ex. 5) to the witness pointing out that he was obliged to withdraw from the contest. It was mentioned in Ex. 5 that, the writer was the victim of communalism. It was further stated in Ex. 5 that, Aditya Narayan Singh had received Rs. 150 from Sri Bhola Singh for withdrawing from the candidature. Aditya Narayan Singh himself did not appear before us to complain about communalism or coercion. We do not, therefore, attach much weight to the recital contained in the letter Ex. 5 dated 3rd December 1951.

Copies of the election returns of Sri Bhola and Aditya Narayan Singh have been filed. They are Exs. 20 and 26. Ex. 24 is a true copy from the sale register of withdrawal forms. These documents show that, on 30th November 1951 Bhola purchased two withdrawal forms, and sold one withdrawal form to Aditya Narayan Singh. It may be that Sri Bhola was anxious that, Sri Aditya Narayan Singh should withdraw from the contest. But it does not follow that, Sri Bhola exercised undue influence for the purpose. Ram Krishna Singh appeared as D.W. 10. He said that he withdrew voluntarily, and not under pressure. He denied that Sri Bhola threatened him at the Collectorate, as alleged by the petitioner. In the original list of particulars attached to the election petition it was not mentioned that, this incident took place at the Collectorate. Sri Bhola was not likely to use pressure upon other candidates at such a prominent place as the Collectorate. Aditya Narayan and Ram Krishna Yadava are said to be the victims of undue influence and coercion. The petitioner did not produce Aditya Narayan Singh to prove the alleged coercion. The defence produced Ram Krishna Yadava to refute the charge of coercion. It is true that P.Ws. 10 and 16 are men of some status. But they are not altogether independent. We hold that the alleged incident of undue influence and coercion at the Collectorate, Ghazipur has not been established.

The second alleged incident relates to a meeting of Ahirs held at Jeopur. It is said that Sri Bhola addressed the meeting, and warned the Ahirs that they would be ex-communicated unless they voted for Sri Bhola. The petitioner produced two witnesses Jaggi (P.W. 4) and Nala (P.W. 12) on the point. They are both Ahirs. Jaggi says that he agreed to support Bhola, and helped him in the

election. Yet Jaggi appeared before the Tribunal to give evidence against Sri Bhola. There are two groups among Ahirs—Gwal and Dandhor Ahir. Witness is a Gwal Ahir while Sri Bhola is Dandhor Ahir. At the end of his cross-examination Jaggi said that, the Ahirs voluntarily agreed to vote for Bhola. There was no pressure on them. The meeting was at Jeopur. Jaggi witness belongs to Jambaipur. Male (P.W. 12) is a resident of Bhagirathpur. The defence produced two witnesses on this point. Balan (D.W. 21) is an Ahir of Bhagirathpur. Sukhdeo Singh (P.W. 22) belongs to Jeopur. These witnesses said that there were no threats given by Bhola in any such meeting at Jeopur. Sukhdeo Singh is also an Ahir. In paragraph 3(b) of the list of particulars attached to the election petition it was stated that, a meeting of Ahirs and other low-caste voters was held at Jeopur. But now it is said for the petitioner that, the meeting at Jeopur was confined to Ahirs only. The second incident of alleged undue influence and coercion has also not been proved.

Issue No. 3.—This Issue relates to the work by certain panches. The petitioner gave a long list of panches. But Sri Sehat Bahadur confined his arguments to six panches only. The six panches may be divided into two groups. The first group consists of Sarju Singh and Barhu Singh. It is said that Sarju Singh worked as Sri Bhola's polling agent at polling station Benua, while Barhu Singh worked as Sri Bhola's polling agent at polling station Dharni. Ram Bilas Singh (P.W. 14) and Ram Adhar (P.W. 18) stated that Sarju Singh worked for Sri Bhola at Polling Station Benua. Ram Bilas Singh is a resident of village Dari Dih. Ramadhar witness belongs to village Nagsar. He belongs to the petitioner's caste. The respondents produced two witnesses to refute the charge. Kedar Nath (D.W. 16) who is a resident of Nagsar Mir Rai, said that Sarju Singh did not work for Bhola. Shambhu Nath Singh (D.W. 17) was the Presiding Officer at Polling Station Benua. He did not notice any improper conduct outside the fancing of the polling station. His diary is Ex-3. There is no note in the diary about any such incident. Ex. 15 is a polling agent form. We may assume that it was signed by Sarju Singh. But this form was not signed a second time by Sarju Singh before the Presiding Officer of the polling station. No one cannot be sure whether Sarju Singh actually worked at the polling station. Sri Ramdeo Rai pleader (P.W. 18) gave evidence about Barhu Singh's work at polling station Dharni. The same witness gave evidence about the incident at the Collectorate also. Chandrashakhar Tewari (D.W. 8) is a teacher at Dharni. He stated that Barhu Singh did not work for any candidate. Sukhrat Singh (D.W. 20) is another resident of Dharni. He also did not notice Barhu Singh at Police Station Dharni. Ex. 17 is Barhu Singh's polling agent form. This form also was not signed before the Presiding Officer. It is possible that Sri Bhola at one time contemplated employing Sarju Singh and Barhu Singh as polling agents. But it is doubtful whether these two men actually worked as polling agents at Benua and Dharni respectively.

Four polling agent forms (Exs. 11, 6, 14 and 13) have been filed for four other persons, Ram Nagina, Ramlakhan Singh, Sudama Singh and Jiwat Ram. There is no oral evidence to prove that, these persons worked as Sri Bhola's agents. There is no definite evidence that, the persons who signed these forms are identical with the persons who are said to be panches. Mere filing of the four forms is not sufficient to prove that, the four panches worked as Sri Bhola's agents. The petitioner has failed to prove that respondent No. 1 violated Rule 61-A of the Panchayat Raj Rules by employing panches of Adalati Panchayats.

Issue No. 4.—The petitioner gave a long list of alleged payments as illegal gratification. But Sri Sahat Bahadur pressed only one case of alleged bribe. Admittedly Sri Bhola paid money to one Gobardhan. According to the petitioner, this payment was made as illegal gratification for winning over voters. The respondent's case is that he engaged Gobardhan's ekka for over a month, and paid him for his services. According to the petitioner, Gobardhan had no ekka at the material time.

The petitioner produced two witnesses on this point. Hardwar Rai (P.W. 2) is Bakhshi of Town Area, Zamania. He stated that Gobardhan does not ply any ekka. There is no note in the Town Area Register about Gobardhan's income from ekka. Gobardhan did not ply any ekka during 1950, 1951 or 1952. The witness belongs to the petitioner's caste. The witness cannot say if Gobardhan plies any ekka outside the Town Area. The Bakhshi admitted that Gobardhan's brother Srikrishna is driving an ekka this year. Shiva Prasad Sinha (P.W. 6) is Nait Nazir at Tahsil Ghazipur. He brought the Register of ekka licences. There is no entry in the Register in Gobardhan's name as owner or driver of any ekka. Gobardhan appeared before the Tribunal as D.W. 1. He

stated that he plied his ekka on hire for Sri Bhola at the rate of Rs. 8 per day. He received payment and issued a receipt. Gobardhan admitted that there is no licence in his name. Gobardhan said that Kalka Prasad wrote the receipt. But Kalka Prasad (D.W. 19) said that the receipt (Ex. 30) is not in his hand-writing. Gobardhan put his thumb-impression on the receipt. Kalka Prasad was formerly the Chairman of the Town Area Zamania. He said that Gobardhan and his brother have got two separate ekkas. Sri Bhola took Gobardhan's ekka on hire and paid Gobardhan in the presence of the witness. Ex. 30 is the receipt for Rs. 376.

It is admitted that Gobardhan has no licence for his ekka. But it is perhaps not unusual for a person in a village to ply an ekka without obtaining the necessary licence. According to Haradwar Rai (P.W. 2), Gobardhan is an ordinary labourer. There was not much point in paying an ordinary labourer as much as Rs. 376. There is no particular reason why we should not accept the statements of Gobardhan and Kalka Prasad that, Sri Bhola engaged Gobardhan's ekka, and paid him his ekka charges. The petitioner did not produce any evidence to show that, the payment was made as illegal gratification. The petitioner has failed to prove the charge of bribery against respondent No. 1.

Issue No. 5.—The petitioner set up four cases of canvassing on communal lines. It is said that meetings were held by Ahirs, Brahmins, Bhumins and Musalmans to induce voters to vote on communal lines. The alleged meeting of Ahirs at village Bapur has already been discussed under Issue No. 2. The second alleged communal meeting was of Brahmins at Deobaram. It is said that Brahmins were collected in this meeting, and were warned that they would be ex-communicated unless they voted for Ramsarup Pande candidate. Aditya Upadhyaya (P.W. 5) and Jagat Narayan Tewari (P.W. 13) gave evidence on this point. Aditya Upadhyaya is a resident of village Sambalpur, which is at a distance of 2½ miles from Deobaram. Jagat Narayan Tewari is a resident of village Dohyan, which is at a distance of three miles from Deobaram. Jagat Narayan alone from his village attended the meeting, although there are forty Brahmin houses in his village. Ram Sarup Tewari (D.W. 4) said that there was no such meeting at Deobaram. This witness is a resident of Betabar, which is at a distance of half a mile from Deobaram. It is unlikely that Brahmins would be threatened with ex-communication simply on the ground of voting in the Assembly election. The petitioner's evidence about the meeting at Deobaram looks suspicious.

The third alleged communal gathering was of Brahmins at the door of Ramayan Rai in village Deoria. Sripat Narayan Rai (P.W. 7) and Ram Adhar (P.W. 18) gave evidence on this point. Sripat Narayan Rai lives at Deva Bairanpur. He said that Sri Bhola has induced tenants of the witness to file application claiming rights of permanent tenant. If a person joins a political party, the caste panchayat is not concerned with such a matter. Election is not a caste-function. The question of election was never placed before the caste-panchayat in any previous meeting. The witness did not attend any meeting in which a Bhumihar was outcasted. Ramadhar (P.W. 18) lives at Nagsar. Sethi Rai (D.W. 2) of village Madsa said that there was no such meeting held at Ramayan Rai's house. The alleged meeting took place at the door of Ramayan Rai in village Deoria. But the petitioner did not produce Ramayan Rai or any resident of Deoria. The petitioner's evidence on this point appears suspicious.

The last alleged communal gathering was of Musalmans. Fateh Husain Khan (P.W. 15) and Moinuddin Khan (P.W. 17) stated that, in a gathering of Musalmans they were warned that, they would be ex-communicated unless they voted for Mahmood Ali Khan candidate. Fateh Hussain Khan is a resident of village Dewaittha. He is President of Gaon Sabha and also Mukhiya. His brother is a Congress member. Moinuddin Khan (P.W. 17) said that he is a member of the District Board on Congress ticket. He was Beni Madho Rai's polling agent in the election. He is an interested witness. Zakir Khan (D.W. 3) stated that Mahmood Ali Khan did not organize any such meeting of Musalmans at Dildarnagar. Presumably Muslims were in a minority in this Constituency. If a Muslim candidate canvassed on communal lines, such canvassing would adversely affect his chances of election. The petitioner's evidence about the meeting of Muslims is unsatisfactory.

Thus the petitioner has failed to prove that respondents Nos. 1, 3, 4, 5 and 6 or any of them, canvassed on communal lines.

Issue No. 6.—It is common ground that, respondent No. 2 was at one time Honorary Magistrate, and Sri Sahat Bahadur did not point out what way an Honorary Magistrate is disqualified for standing for election. An Honorary Magistrate is not disqualified by any provision in Article 191 of the Constitution. We,

therefore, hold that an Honorary Magistrate is not disqualified for standing for election. There is no evidence that respondent No. 2 canvassed as Honorary Magistrate. If respondent No. 2 could stand for election, he could also canvass. We, therefore, hold that respondent No. 2 was not disqualified for standing for election on the ground of being an Honorary Magistrate, that he did not canvass as Honorary Magistrate, and that there was no improper or illegal canvassing on his part. It is not, therefore, necessary to consider now far such canvassing materially affected the result of the election.

Issue No. 7.—The petitioner quoted several items of false returns of expenses. But Sri Sahat Bahadur pressed only one item under this Issue. The item relates to the payment of Rs. 376 to Gobardhan. We have found under Issue No. 4, that the sum of Rs. 376 was paid by Sri Bhola to Gobardhan as charges of hiring his ekka. This item has been shown in Sri Bhola's return of election expenses. The payment is supported by a receipt. It cannot, therefore, be said that the return of expenses is false. The petitioner has failed to prove that the return of expenses of respondent Nos. 1 and 2 were in any way false.

Issue No. 8.—It is alleged that respondents Nos. 1, 2 and 3 used threats and pressure to make respondents Nos. 7, 8, 9 and 10 withdraw from the election. Under Issue No. 2 we have already disposed of the alleged undue influence and coercion against Aditya Singh (respondent No. 7) and Ram Kishen Yadava (respondent No. 10). We are now left with the charges of threats and pressure against Narbadeshwar (respondent No. 8) through Jagat Narayan Tewari (P.W. 13), and upon respondent No. 9. Jagat Narayan Tewari says that he did bring pressure upon Narbadeshwar to make him withdraw from the contest. Lautu Singh Gautam (D.W. 7) stated that Narbadeshwar withdrew from the contest voluntarily after consulting this witness. This witness is an N.A.L.T. and Kavya-kirth. He is a retired Principal of a Degree College. His statement appears to be more reliable than the statement of P.W. 13 Narbadeshwar. Pande was not produced by the petitioner to prove the alleged threat and coercion.

Kapildeo Upadhyaya (P.W. 11) stated that Raghunath Prasad exercised pressure upon Vidya Sagar candidate to secure his withdrawal from the contest. Raghunath's nephew is Uma Shankar. Ex. 29 is an application on behalf of Vidya Sagar for withdrawing the deposit of Rs. 250. This witness says that Ex. 29 was signed by Uma Shankar. Ex. 29 is dated 20th March 1952. It may be that Vidya Sagar obtained refund of his security deposit through Uma Shankar. But it does not mean that Raghunath put pressure upon Vidya Sagar to withdraw. Vidya Sagar himself appeared before the Tribunal as D.W. 18, and stated that he withdrew of his own free will and not under pressure from anybody. In view of the candidate's statement, the evidence of Kapildeo Upadhyaya cannot be accepted. The petitioner has failed to prove that, respondent Nos. 1, 2 and 3 used threats and pressure to make respondents Nos. 7, 8, 9 and 10 withdraw from the election as alleged.

Issue No. 9.—No charge of corrupt or illegal practices has been proved against respondent No. 1. It is therefore necessary to consider whether he took precautions to prevent the commission of corrupt and illegal practices.

Issue No. 10.—Since commission of irregularities has not been proved, there is hardly any question of considering the effect of the alleged irregularities. We, may however, mention that, even if we assume that some panches of Adalati Panchayats worked for respondent No. 1, it has not been shown that such work by the panches has materially affected the result of the election. As a result of the poll, respondent No. 1 secured 9,556 votes. The petitioner secured 8,765 votes. Thus respondent No. 1 won the election by a margin of 791 votes. The petitioner has not shown that, the effect of the help given by certain panch was so serious as to wipe out the margin of 791 votes.

Issue No. 11.—Since the petitioner has failed on all the points, the petition must be dismissed. Respondent No. 1 is entitled to get his costs from the petitioner. We fix the costs of respondent No. 1 at Rs. 800.

ORDER

The election petition is dismissed.

Respondent No. 1 shall receive Rs. 800 as his costs from the petitioner. The petitioner and other respondents will bear their own costs. The petitioner shall be entitled to get a refund of the balance (Rs. 200) from his security deposit of Rs. 1,000.

Under section 99, Representation of People Act, 1951, it is declared that no charge of any corrupt or illegal practice has been established against any respondent.

(Sd.) V. G. OAK, I.C.S.—Chairman.

(Sd.) N. N. MUKERJI, Member.

(Sd.) BABU RAM AVASTHY, Member.

The 11th May 1953.

Munsarim.

(Sd.) Illegible.

Election Tribunal,
Allahabad.

Counsel for petitioner Sri Sehat Bahadur.
Counsel for respondents..... Sri S. C. Khare.

[No. 19/275/52-Elec.III.]

By Order,

P. R. KRISHNAMURTHY, Asstt. Secy.

